

Should I have a separate Will for Foreign Assets?

Discussing the practical advantages.

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If an individual owns foreign assets, the question arises as to whether more than one Will is required. The reason for this, is that the provisions in a Will made in one jurisdiction may not necessarily be recognised in another jurisdiction where the offshore assets are registered.

In some cases, although one Will could be used, there may be practical advantages in having separate Wills for each jurisdiction. It is preferable to have a separate foreign Will dealing with offshore assets, as this will address jurisdiction specific requirements.

For example, a South African Will would not be effective to deal with a house in Jersey unless the necessary formalities of having read the Will out loud and witnessed by a notary public had been observed.

Another common query is why an offshore Will is necessary at all if the executor has the authority provided by South African Letters of Executorship. The answer is that the majority of asset holders registered outside of SA will not recognise Letters of Executorship and will request a local probate before they will allow an executor to administer the assets.

Since the relaxation of exchange control an increasing number of South Africans have been investing offshore. If a South African resident has only a South African Last Will and Testament, the executor of his estate may have to apply for foreign orders to recognise his right to deal with the property; this will result in delays, problems with foreign language and additional administration costs.

It is important to specify in the foreign Will, that

it deals specifically, and only, with those foreign assets, and in the South African Will, that it deals only with the South African assets, as we do not want the one Will to revoke the other.

Will this affect my Estate Duty? Estate duty is payable on all assets, wherever your assets are situated (except where assets were acquired by the deceased before he became ordinarily resident for the first time, or even after he became ordinarily resident, if he acquired the property from a non-resident donor or a non-resident deceased estate).

Tips for individuals:-

1. Always advise a Will draftsman if you own foreign assets. Do not assume that an SA Will can adequately dispose of foreign assets in the way you wish.
2. Always advise a Will draftsman if you already have an offshore Will. If you do not mention this, a later Will may accidentally revoke your offshore Will, which is already in existence.
3. Where you own immovable property abroad, it is almost always essential to have a local Will in place to deal with the succession of the property. In this case, it is usual practice to obtain advice from a lawyer in the jurisdiction where the property is situated.
4. When an offshore Will is signed in South Africa, depending in which jurisdiction the offshore Will is to be used, there are specific signing formalities that need to be adhered to - ensure your Wills draftsmen is aware of these. ⊕



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